

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**JEFFERSON-PILOT LIFE
INSURANCE COMPANY,
PLAINTIFF**

**CASE NO. 1:02CV00479
(SPIEGEL, J.)
(HOGAN, M.J.)**

VS.

**CHRISTOPHER L. KEARNEY,
DEFENDANT**

ORDER

The Court conducted an informal discovery conference on April 28, 2004, the stimulus for which was Plaintiff's issuance of notices to take the deposition of Clinton Miller and Defendant's issuance of notices to take the deposition of several persons (Mills, Hughes, Dittmar, Shelton, Bonsall, Harden, Dempsey, Beattie, Roberson and Maxwell and a Rule 30(b)(6) deposition of Plaintiff). Pending before the Court is a claim for Declaratory Judgment, filed by Plaintiff on a coverage issue. Plaintiff, the practical entity that it is, seeks to avoid discovery until after the Court renders a decision on Plaintiff's Motion for Summary Judgment (Doc. 19) relative to the declaratory judgment claim. Defendant, arguing that the policy is ambiguous and therefore to be construed in his favor, wants the deposition testimony to shed light on Plaintiff's prior interpretation of the policy language in question. Defendant argues that he needs the deposition testimony in order to respond to Plaintiff's previously-filed Motion for Summary Judgment. Discovery closed as of May 1, 2004 according to the Calendar Order (Doc. 25). The Court finds the discovery sought by Defendant to be arguably important, but the timing of seeking judicial intervention at this late stage to be unfortunate.

However, since the dispositive motion deadline is June 1, 2004, and all the depositions noticed by the parties can take place prior to that time, the Court hereby orders that Defendant's depositions which are the subject of this dispute, take place on or before May 26, 2004 and that these depositions be taken in Cincinnati, Ohio where this case pends. The Plaintiff's deposition

of Clinton Miller is not impacted by the pending motion for Summary Judgment and must be completed by the dispositive motion deadline of June 1, 2004. It was represented that Mr. Miller resides in California; therefore, his deposition shall take place there.

Since this Court does not have a general Order of Reference, but was referred only the discovery dispute, we do not deem it appropriate to alter any deadlines set by Judge Spiegel that could affect his schedule, in other words, from the dispositive motion deadline forward. Therefore, the wiggle room only extends until June 1, 2004. Defendant must either obtain an extension from Judge Spiegel or obtain the deposition transcripts in time to file his Memorandum in Opposition to Plaintiff's Motion for Summary Judgment on or before June 1, 2004.

May 5, 2004

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge